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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,446	08/01/2001	Denise L. Draper	337298001US1	6124
22434	7590	09/24/2007	EXAMINER	
BEYER WEAVER LLP			TO, BAOQUOC N	
P.O. BOX 70250			ART UNIT	PAPER NUMBER
OAKLAND, CA 94612-0250			2162	
			MAIL DATE	DELIVERY MODE
			09/24/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	09/921,446	DRAPER ET AL.	
	Examiner	Art Unit	
	Baoquoc N. To	2162	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-32,36,38,40 and 42-56.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE


8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

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Continuation of 3. NOTE: the amendment such as "storing thereon computer-readable medium, the computer-readable medium storing thereon" in claim 9 and a deletion from claim 15 such as "in a computer system" raise new issue which requires further search and/or consideration. The amendment to the specification such as " various disclosed embodiments also relate to an apparatus such as a computer for performing the disclosed operations. Still further, various disclosed embodiments relate to machine-readable media on which are stored program instructions for performing operations on a computer or computer system" which raise new matter because the subject matter was not original disclosed. Regarding to paragraph 1 of the remark, applicant "The reference Drapper, was owned by the same entity as the subject matter applicant at the time of the invention was made. As requested by the Examiner, a copy of the pertinent merger agreement is submitted herewith. As such, Applicant respectfully submits that the cited reference Drapper shall not be preclude patentability of the pending under claims under 35 USC 103 (a). Accordingly, Applicant respectfully submits the claims 9-32, 36, 38, 40 and 42-56 are allowable. According to MPEP section 706.02(1) sets forth the conditions for patentability and non-obvious subject matter for rejection under 35 USC 103(a) using prior art under 35 U.S.C 102(e). This section state that "[s] subject matter developed by another person, which qualifies as prior art only under one or more subsection (e),(f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person." According to record, which provides from the applicant, Drapper is subjected to a common assignee Nimble Technology, INC, Seattle, Was which is not the same assignee as Nimble Acquisition corp., A DELAWARE CORPORATION. Therefore, under MPEP section 706.02, subject matter and the claimed invention in Drapper were not, at the time of the invention was made, owned by the same subject to an obligation of assignment to the same entity. In paragraph II of the remarks, the specification has been amended in response to the Examiner's objection to the specification. The amendment to the specification such as " various disclosed embodiments also relate to an apparatus such as a computer for performing the disclosed operations. Still further, various disclosed embodiments relate to machine-readable media on which are stored program instructions for performing operations on a computer or computer system" which raise new matter because the subject matter was not original disclosed. In paragraph III of the remarks, the applicant amended claim 9 in response to the Examiner's objection under 35 USC 101 to clarify that the computer-readable medium stores computer-readable instructions, and therefore excludes waves or energy (which are not computer-readable instructions). With respect to claim 15, the Examiner has indicated that the specification does not disclose a computer system. Applicant has therefore removed this limitation from claim 15. Applicant respectfully asserts that claim 15 is directed to statutory subject matter, since it causes the storing of data in a data structure. More particularly, the claimed invention enables data retrieved from multiple data stores storing data in different formats to be stored in a single data structure. As to result, a query directed to multiple data stores storing data in different formats may be processed. Accordingly, Applicant respectfully requests that the examiner withdraw the rejection of the claim under 35 USC 101. Claim 9 without the support from the specification is non-statutory subject matter because claim as does not exclude from claiming form of energy such as wave and signal. Claim 24 without support from the specification is also non-statutory subject matter because the claim appears to be program pro se or software per se. Although, applicant has invoke 112 6th paragraph which requires the claim to interprets as all structured disclosed in the specification; however, the specification has not indication of any computer system and/or any computer hardware components .


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